

In the Matter of PENNSYLVANIA SALT MANUFACTURING COMPANY and
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Case No. 7-R-1701.—Decided April 28, 1944

Mr. Clyde A. Armstrong, of Pittsburgh, Pa., for the Company.

Mr. James M. Scanlon, of Detroit, Mich., *Mr. Lee Auler*, of Wyandotte, Mich., and *Mr. Charles Fell*, of Washington, D. C., for District 50.

Mr. Joseph J. George, of Wyandotte, Mich., for the Intervenor.

Mr. William Whitsett, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called District 50, alleging that a question affecting commerce had arisen concerning the representation of employees of Pennsylvania Salt Manufacturing Company, Wyandotte, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Max Rotenberg, Trial Examiner. Said hearing was held at Detroit, Michigan, on March 27, 1944. At the hearing, Pensalt Workers Union, herein called the Intervenor, moved to intervene. The motion was granted without objection. The Company, District 50, and the Intervenor appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is engaged at its plant at Wyandotte, Michigan, in the manufacture of heavy chemicals. It annually purchases raw ma-

terials valued in excess of \$4,000,000, approximately 90 percent of which is shipped to it from points outside the State. The Company annually manufactures and sells products valued in excess of \$7,000,000, approximately 80 percent of which is sold and shipped to purchasers located outside the State.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Company.

Pensalt Workers Union is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to District 50 as the exclusive bargaining representative of its employees until District 50 has been certified by the Board in an appropriate unit.

The Intervenor contended at the hearing that its contract with the Company, dated April 28, 1941, and thereafter amended, was a bar to the present proceeding. The contract, which has been automatically renewed from year to year, contains the ordinary 30-day renewal clause. Since the petition of District 50 was filed February 12, 1944, the contract does not bar a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that District 50 represents a substantial number of employees in the unit hereinafter found appropriate.¹ The Intervenor has an interest in this proceeding arising out of its contract.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The parties agree that a plant-wide unit composed of production and maintenance employees, including shipping and receiving department employees, plant department clerks, and janitors, is appropriate for the purposes of collective bargaining, but they disagree as to the inclusion or exclusion of several categories of employees. As to control

¹The Field Examiner reported that District 50 submitted 449 cards, which bore apparently genuine original signatures; that the names of 377 persons appearing on the cards were listed on the Company's pay roll of February 21, 1944, which contained the names of 677 employees in the appropriate unit; that 94 cards were dated in January and February 1944; that 299 were dated from August through December 1943; and that 56 were undated.

laboratory and engineering employees, District 50 desires their exclusion from, whereas the Intervenor and the Company seek their inclusion in, the unit. The record shows that there are approximately 20 laboratory employees engaged in general chemical work. They work in a building separate and apart from production and maintenance employees; they receive a monthly salary and more liberal vacations than production and maintenance employees who are paid on an hourly basis. There are approximately 15 engineering employees engaged in drafting and engineering duties. They, too, are salaried and work in a separate department; their vacation plans correspond to those of laboratory employees. The foregoing facts, however, are not sufficiently distinctive to merit the exclusion of laboratory and engineering employees from the unit. Although they do not work alongside production and maintenance employees, they are separated from them only for reasons of increased efficiency and they are considered an integral part of production by the Company. The record discloses that except for supervisors, no special training is required of laboratory employees, good eyesight, and a knowledge of addition and subtraction being the principal qualifications. In the engineering department, the main qualification for employment is a limited knowledge of mechanical drawing. Since 1941 the foregoing categories have been included in the unit, with respect to which the Company and the Intervenor had bargained. The record discloses no compelling reason for departing from this bargaining history which has been substantial and has proved satisfactory. We shall include them in the unit.

District 50 seeks the exclusion of watchmen. They are not uniformed, armed, nor militarized; they are paid on an hourly basis like production and maintenance employees; and they are not alleged to have any supervisory authority. Watchmen having been included in the unit since 1941, we shall, in accordance with our usual practice, include them.

District 50 likewise seeks the exclusion of temporary leaders, whereas the Intervenor and the Company contend that they should be included. These employees, about 40 in number, perform some of the duties of foremen when the latter are sick or on vacation. While performing such duties they are paid a slightly higher rate of pay, but they are not clothed with authority to hire, discharge, or discipline employees or effectively recommend such action. We shall, therefore, include them in the unit of which they have been a part since 1941.

We shall likewise include in the unit the two production and maintenance employees who are paid a salary rather than by the hour, since they were previously included in the unit and since their mode of pay is the only factor which distinguishes them from the other production and maintenance employees.

We find that all production and maintenance employees, including shipping and receiving department employees, laboratory and engineering employees, plant department clerks, janitors, temporary leaders, and watchmen, but excluding office clerical employees, foremen, assistant foreman, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Pennsylvania Salt Manufacturing Company, Wyandotte, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the payroll period immediately preceding the date of this Direction, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees, who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by District 50, United Mine Workers of America, or by Pensalt Workers Union, for the purposes of collective bargaining, or by neither.